Rocket Industries, Inc. *and* Teamsters Automotive, Industrial & Allied Workers, Local 495, International Brotherhood of Teamsters, AFL–CIO.[1] Case 21–CA–27760

September 20, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On May 22, 1991, Administrative Law Judge George Christensen issued the attached decision. The Respondent filed exceptions, and the General Counsel filed a motion to strike the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings,[2] and conclusions as modified[3] for the reasons set forth below, and to adopt the recommended Order as modified.

Section 102.46(b) of the Board's Rules and Regulations sets forth the minimum requirements with which exceptions to an administrative law judge's decision must comply in order to merit consideration by the Board. A party excepting to the findings of an administrative law judge must set forth with specificity those portions of the judge's decision to which it excepts, and support the contentions with legal or record citations or appropriate argument. *Bonanza Sirloin Pit*, 275 NLRB 310 (1985).

In its exceptions the Respondent has listed no rulings or findings of the judge that it contends are in error.[4] Consequently, we find that the Respondent's exceptions do not conform to the minimum requirements of Section 102.46(b) of the Board's Rules and Regulations in that they fail to put in issue any of the findings of the judge. We therefore grant the General Counsel's motion to strike the Respondent's exceptions, and we adopt the judge's decision. See Section 102.48(a) of the Board's Rules and Regulations.[5]

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] The judge misspelled the name of the Respondent's president, Raymond L. Bleiweis.

[3] The judge inadvertently omitted from his recommended Order a provision requiring the Respondent to cease and desist from violating the Act ''in any like or related manner.'' We shall modify the judge's recommended Order and notice accordingly.

[4] In its exceptions, the Respondent contends solely that considering the Respondent's economic circumstances ''there is a '*moral abuse issue*' of allowing a second union to take up the bargaining after the first one virtually abandoned the process.'' (Emphasis in original.) In this regard, the Respondent notes that United Rubber, Cork, Linoleum & Plastic Workers of America, District 3, AFL–CIO–CLC won an election held November 5, 1987, and asserts that when negotiations reached an impasse, it ''passed the baton'' to the Union here for a ''second bite of the apple.''

[5] Even if we were to consider the Respondent's exceptions sufficient under Sec. 102.46, we nevertheless would adopt the judge's decision on the merits. In granting the General Counsel's motion to strike the Respondent's exceptions, Member Devaney emphasizes that in its exceptions the Respondent does not specify or indicate how the judge erred in finding the violations alleged and does not identify or place in issue any matter pertinent to the judge's decision. Member Devaney therefore finds the present case distinguishable from *Worldwide Detective Bureau*, 296 NLRB 148 (1989), where he would have denied the General Counsel's motion to strike the respondent's exceptions because there, unlike here, the respondent's exceptions sufficiently identified the portions or aspects of the judge's decision that the respondent claimed were erroneous.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Rocket Industries, Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1.

''1. Cease and desist from

''(a) Failing and refusing to furnish Teamsters Automotive, Industrial & Allied Workers, Local 495, International Brotherhood of Teamsters, AFL–CIO with the information contained in Local 495's July 10 and August 22, 1990 written requests addressed to and received by Rocket Industries, Inc. and failing and refusing to meet and bargain in good faith with Teamsters Local 495 at its request concerning the rates of pay, wages, hours, and working conditions of the employees within the unit of Rocket Industries, Inc.'s employees Teamsters Local 495 was certified to represent for collective-bargaining purposes on March 15, 1990.

''(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to furnish to Teamsters Automotive, Industrial & Allied Workers, Local 495, International Brotherhood of Teamsters, AFL–CIO at its request information necessary and relevant to its execution of its function and duty to represent and bargain with us on behalf of our employees within the following unit:

> All production and maintenance employees, shipping employees, welding employees, painting employees, Excel employees, bicycle assembly em-

ployees, packing employees, mechanics, machine shop employees, quality control employees, drivers, powder coating employees, Excel metal fabrication employees, polishing employees, plating employees, foundry employees, wheel machining employees, Excel packaging employees, auto products packaging employees, shipping and wheel packaging employees, Excel products order pullers and auto products pullers employed by us at our facilities located at 9935 Beverly Boulevard, Pico Rivera, California, and 3501 Union Pacific Avenue, Los Angeles, California; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to bargain in good faith with Teamsters Local 495 at its request concerning the rates of pay, wages, hours, and working conditions of our employees within the above-described unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish forthwith to Teamsters Local 495 the information it requested from us on July 10 and August 22, 1990.

WE WILL bargain with Teamsters Local 495 at its request concerning the rates of pay, wages, hours, and working conditions of our employees within the above-described unit and, if an agreement is reached, embody that agreement in a signed contract and comply with its terms.

WE WILL recognize and bargain with Teamsters Local 495 as the duly designated collective-bargaining representative of our employees within the above-described unit for at least 1 year from the date we commence good-faith bargaining with Teamsters Local 495 over the rates of pay, wages, hours, and working conditions of our employees within the above-described unit.

ROCKET INDUSTRIES, INC.

Robert DeBonis, for the General Counsel.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge. On April 2, 1991, I conducted a hearing at Los Angeles, California, to try issues raised by a complaint issued on February 7, 1991, based on a charge filed by Teamsters Automotive, Industrial & Allied Workers, Local 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (Union) on October 22, 1990, and amended on November 28, 1990.

The complaint alleged and Rocket Industries, Inc. (Respondent) in its answer thereto admitted at all material times the Union was the duly designated exclusive collective-bargaining representative of an appropriate unit of the Respondent's employees, the Union asked the Respondent to furnish information necessary and relevant to the Union's performance of its function as the representative of the employees, and the Union asked the Respondent to bargain with it concerning the wages, hours, and working conditions of the unit employees. The complaint further alleged and the answer denied, however, the Respondent failed and refused to supply the requested information, that the Respondent refused to bargain with the Union, and the Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (Act).

The issues created by the foregoing are whether:

1. The Respondent failed and refused to supply the Union with the requested information;

2. The Respondent refused to bargain with the Union concerning the wages, hours, and working conditions of the unit employees; and

3. If so, whether the Respondent thereby violated the Act.

The General Counsel appeared by counsel and was afforded full opportunity to adduce evidence, examine witnesses, argue, and to file a brief.[1]

The initial and amended charges were filed by counsel for the Union and he was apprised of the time, date, and place of hearing. However, he did not appear and participate in the hearing. The Respondent's answer to the complaint was filed by counsel and he represented the Respondent in exchanges with the Union concerning the Union's information request and request for bargaining. However, in a prehearing conference, the Respondent's owner, Raymond Bleiwiss, advised me that counsel no longer represented the Respondent. Bleiwiss was apprised of the time, date, and place of the hearing but did not appear and participate therein either personally or by a representative.

Based on my review of the entire record, observation of the witness, perusal of the brief and research, I enter the following

FINDINGS OF FACT[2]

I. JURISDICTION

The complaint alleged, the answer admitted, and I find at all material times the Respondent, a California corporation, was engaged in the manufacture of automobile wheels and exercise equipment at facilities located at Pico Rivera and Los Angeles, California, annually sold and shipped goods and products valued in excess of $50,000 directly to customers located outside the State of California, and was an employer engaged in commerce in a business affecting commerce within the meaning of Section 2 of the Act.

[1] While counsel for the General Counsel did not request the opportunity to file a brief prior to the close of the hearing, he filed a timely posthearing motion for leave to file a brief. That motion is granted and the brief has been fully considered.

[2] These findings are based on the undisputed testimony of Robert M. Lennox (Lennox), the president of the Union, which I credit, and documents contained in the official files of the Union and whose authenticity was established by Lennox.

II. LABOR ORGANIZATION

The complaint alleged, the answer admitted, and I find at all material times the Union was a labor organization within the meaning of Section 2 of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

On November 17, 1989, Region 21 conducted an election among the following unit of the Respondent's employees deemed appropriate for collective-bargaining purposes within the meaning of Section 9 of the Act:

> All production and maintenance employees, shipping employees, welding employees, painting employees, Excel employees, bicycle assembly employees, packing employees, mechanics, machine shop employees, quality control employees, drivers, powder coating employees, Excel metal fabrication employees, polishing employees, plating employees, foundry employees, wheel machining employees, Excel packaging employees, auto products packaging employees, shipping and wheel packaging employees, Excel products order pullers and auto products pullers employed by Respondent at its facilities located at 9935 Beverly Boulevard, Pico Rivera, California and 3501 Union Pacific Avenue, Los Angeles, California; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

A majority of the employees within the unit voted for representation by the Union for the purpose of bargaining collectively with the Respondent concerning their wages, hours, and working conditions.

On November 22, 1989, the Respondent filed objections to the election.

On December 28, 1989, Regional Director for Region 21 issued a report recommending the Respondent's objections be overruled.

On January 11, 1990, Charles H. Goldstein, as counsel for the Respondent, filed exceptions to the Regional Director's report and recommendations with the National Labor Relations Board (Board) and on January 12, advised the Union he was authorized to represent the Respondent in future dealings with the Union.

On March 15, 1990, the Board sustained the Regional Director, overruling the Respondent's objections to the election, and certified the Union as the exclusive collective-bargaining representative of the Respondent's employees within the unit.

On July 10, 1990, the Union sent a letter to Goldstein requesting the Respondent furnish the Union the following information to assist the Union in drafting a proposal for a collective-bargaining agreement covering the wages, hours, and working conditions of the unit employees:

> 1. The name and current address of each employee in the bargaining unit; their present classification of work, present shift assignment and starting time.
> 2. The original date of hire and age of each employee.
> 3. The present hourly rate of pay of each employee.
> 4. The Company's present vacation policy.
> 5. The Company's present sick leave policy.
> 6. A copy of your present health, medical, and hospital program; the total cost of same; the amounts paid by the Company and by the individual employee and the total number of employees in the bargaining unit who are covered by the program.
> 7. The number of paid holidays.
> 8. Your funeral leave policy.
> 9. The normal work week and the number of hours per day each employee is required to work.
> 10. The number of hours each shift is required to work.
> 11. The Company's lunch policy.
> 12. A copy of the present Company rules.
> 13. A list of each job in the bargaining unit.
> 14. Any hours, profit sharing or retirement program; the cost of the program; a copy of same and how many employees covered.
> 15. Any other terms and conditions of employment and/or the benefits which apply to employees in the bargaining unit.

On August 2, 1990, Goldstein responded with a letter stating the Respondent was understaffed, it was going to take some time to prepare the requested information and the Union would be contacted to schedule negotiations at a mutually agreeable time and place when the requested information had been prepared.

On August 22, 1990, the Union sent another letter to Goldstein in which it renewed its information request by letter, advised Goldstein the Union contacted Commissioner Buffington of the Federal Mediation and Conciliation Service, wished to proceed under his auspices in contract negotiations; and asked when the Union could expect to receive the requested information and commence negotiations.

In early September 1990, Buffington telephoned Lennox to see when and if bargaining could commence. Lennox told Buffington about the Union's repeated information request and the lack of a response. Buffington stated he would telephone Goldstein to ascertain what the holdup was. Buffington subsequently telephoned Lennox, told Lennox he contacted Goldstein, Goldstein stated his client was out of the country, and stated he was unable to produce the requested information. Lennox responded the Union needed the requested information and was anxious to begin negotiations. Buffington suggested the Union wait awhile and see if the information would be supplied.

Still hearing nothing from the Respondent, on October 16, 1990, the Union caused its attorney to file the initial charge in this case.

Neither the Respondent directly nor through its counsel thereafter contacted the Union, though following the filing of the charge (in November 1990) Buffington telephoned Lennox to state Goldstein contacted him and offered to meet and negotiate with the Union, to which Lennox responded without the requested information the Union was unable to formulate an intelligent proposal concerning the wages, hours, and working conditions of the unit employees.

Since that time the Union has had no further contact with Buffington, with Goldstein, or with any representative of the Respondent, nor has the Union received the requested information.

B. *Analysis and Conclusions*

1. The information request

The information sought by the Union clearly seeks to ascertain the existing rates of pay, wages, hours, and working conditions of the unit employees and clearly is necessary for and relevant to the Union's execution of its duty to formulate and seek from the Respondent adjustments thereto it believes are in the unit employees' best interests. In fact, the Respondent so conceded in admitting the correctness of paragraph 8(b) of the complaint.

Just as clearly, the failure and refusal of the Respondent to furnish the Union with that information is an unfair labor practice in violation of Section 8(a)(1) and (5) of the Act.[3]

I therefore find, and conclude, the Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing since July 1990 to furnish the Union with the information it requested by letters dated July 10 and August 22, 1990.

2. The refusal to bargain

On August 22, 1990, the Union coupled its renewed information request with a request to commence bargaining as soon as the Union was supplied with the requested information and enabled to prepare intelligent proposals for inclusion in a collective-bargaining agreement concerning the rates of pay, wages, hours, and working conditions of the unit employees.

It is clear the Respondent stalled the commencement of such negotiations by failing and refusing to supply the requested information, never supplied the requested information, never contacted the Union with a response on its request for negotiations, and there is only hearsay evidence Goldstein, after receipt of the Union's unfair labor practice charge, told a mediator the Respondent was prepared to meet with the Union—without any mention of the Union's pending information request.

In view of the Respondent's earlier stalling tactics, its failure to accompany its offer to meet with submission of the requested information, and the fact the Goldstein offer was only made after the initial charge was filed, I find the alleged Goldstein offer to meet and bargain with the Union was not a good-faith offer.

I therefore find, and conclude, the Respondent failed and refused to engage in good-faith collective bargaining with a view towards negotiating a contract with the Union covering the unit employees' wages, hours, and working conditions.

I therefore further find, and conclude, since the March 15, 1990 certification of the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has failed and refused to bargain in good faith with the Union concerning the rates of pay, wages, hours, and working conditions of the unit employees, thereby violating Section 8(a)(1) and (5) of the Act.[4]

CONCLUSIONS OF LAW

1. At all pertinent times the Respondent was an employer engaged in commerce in a business affecting commerce and the Union was a labor organization within the meaning of Section 2 of the Act.

2. The Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to furnish to the Union information requested by the Union necessary and relevant to its execution of its duty to bargain intelligently on behalf of the unit employees and by its failure and refusal to bargain in good faith at the Union's request concerning the rates of pay, wages, hours, and working conditions of the unit employees.

3. The unfair labor practices just enumerated affected and affect interstate commerce as defined in Section 2 of the Act.

THE REMEDY

Having found the Respondent engaged in unfair labor practices, I recommend the Respondent be directed to cease and desist therefrom and to take affirmative action designed to effectuate the purposes of the Act.

Having found the Respondent failed and refused to furnish information requested by the Union to enable the Union to intelligently bargain with the Respondent on behalf of the unit employees and to bargain in good faith with the Union concerning those employees' rates of pay, wages, hours, and working conditions, I recommend the Respondent be directed to furnish the Union forthwith with the requested information and, following the submission of that information to the Union, meet and bargain with the Union at its request concerning the rates of pay, wages, hours, and working conditions of the unit employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Rocket Industries, Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish Teamsters Automotive, Industrial & Allied Workers, Local 495, International Brotherhood of Teamsters, AFL–CIO with the information contained in Local 495's July 10 and August 22, 1990 written requests addressed to and received by Rocket Industries, Inc.

(b) Failing and refusing to meet and bargain in good faith with Teamsters Local 495 at its request concerning the rates of pay, wages, hours, and working conditions of the employees within the unit of Rocket Industries, Inc.'s employees Teamsters Local 495 was certified to represent for collective bargaining purposes on March 15, 1990.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish forthwith to Teamsters Local 495 the information Local 495 requested in writing of Rocket Industries, Inc. on July 10 and August 22, 1990.

(b) Following the furnishing of that information, meet and bargain with Local 495 at its request concerning the rates of pay, wages, hours, and working conditions of the employees of Rocket Industries, Inc. within the certified unit and, if understanding is reached, embody such understanding in a written and signed agreement and implement the terms thereof.

[3] *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); and cases subsequent.

[4] *NLRB v. Katz*, 369 U.S. 736 (1962); and cases subsequent.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Recognize and bargain with Local 495 as the duly designated exclusive collective-bargaining representative of Rocket Industries, Inc.'s employees within the certified unit for the year commencing with the initial date of bargaining pursuant to this Order.

(d) Post at its facilities in Pico Rivera and Los Angeles, California, and any other locations where notices are customarily posted copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 21 shall be immediately signed and posted by a duly authorized representative, and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken to ensure the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''